

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 700 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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RAMABHAI BHAJANBHAI DANTANI

Versus

SUNDARLAL MANTHANLAL DANTANI

Appearance:

MR ANSHIN H DESAI for Petitioner

MR HN BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/03/99

ORAL JUDGEMENT

Rule. In this Civil Revision Application the petitioner has challenged the order dated 19-8-94 passed by the learned Judge, Small Cause Court, Ahmedabad, rejecting the petitioner's application Exh.43 for being brought on record as the heirs of deceased Applicant in P.S.R.P. No.10/1990 filed under Section 41 of the Presidency Small Cause Courts Act.

2. The petitioner had challenged the said order by filing Civil Appeal No.26/98. However, the appeal came to be dismissed by the Appellate Bench on the ground that the appeal is not maintainable. Hence, the petitioner has challenged the order of the Small Causes Court, Ahmedabad on merits.

3. The suit property belonged to Punjiben Koyabhai who filed P.S.R.P. Application No.10 of 1990 for getting possession of the suit property from the respondent. Punjiben Koyabhai expired on 9-3-94. After the death of Punjiben Koyabhai, the present petitioner filed application Exh.43 for being brought on record as the

heir of deceased applicant on the ground that the deceased had executed a will dated 19-9-91 bequeathing the suit property to the petitioner. The learned trial Judge, however, dismissed the application on the ground that in the will it was mentioned that the deceased had two sons viz Sundarlal, son of the deceased through her first marriage and Ramanlal, present petitioner, son of the deceased through her second marriage. The learned trial Judge surprisingly rejected the application on the ground that since the deceased had 2 sons, both the sons were entitled to inherit property equally, and therefore, the present application was not maintainable. For holding that the deceased had 2 sons, the learned trial Judge referred to the will, but then did not pass appropriate order on the basis of the will without expressing any opinion about the will.

Learned counsel for the respondent submits that the respondent challenges the said will. However, P.S.R.P. proceedings would not be appropriate proceedings for deciding the genuineness or otherwise of aforesaid will.

4, In the result, while reserving liberty to the parties to take out appropriate proceedings before the Civil Court, this Revision Application is allowed and application Exh.43 filed by the petitioner for bringing him on record as the heir of deceased Punjiben in P.S.R.P. Application No.10/90 is hereby granted without prejudice to the right of the respondent herein to challenge the aforesaid will.

5. Rule is accordingly made absolute with no order as to costs.

12-3-99 (M.S.Shah, J.)

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